



LIBRARY OF CONGRESS

U.S. Copyright Office

37 CFR Part 201

[Docket No. 2018-6]

Streamlining the Administration of DART Royalty Accounts and Electronic Royalty Payment Processes

AGENCY: U.S. Copyright Office, Library of Congress.

ACTION: Final rule.

SUMMARY: The U.S. Copyright Office is establishing a rule to codify its procedures for closing royalty payments accounts under section 1005 of the Copyright Act, and is amending its regulations governing online payment procedures for statutory licensing statements of account to no longer require that payments for these accounts be made in a single lump sum. These changes are intended to improve the efficiency of the Copyright Office's Licensing Division operations.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Regan A. Smith, General Counsel and Associate Register of Copyrights, by email at regans@copyright.gov, or Jalyce Mangum, Attorney-Advisor, by email at jmang@copyright.gov. Each can be contacted by telephone by calling (202) 707-8350.

SUPPLEMENTARY INFORMATION:

I. Background

On July 11, 2018 (83 FR 32068), the Office published a Notice of Proposed Rulemaking (“NPRM”) to streamline the administration of digital audio recording technology (DART) royalty accounts and the statement of account royalty payment processes. Specifically, the Copyright Office proposed to codify the manner in which it would exercise its statutory authority to close out DART royalty payment accounts under 17 U.S.C. 1005, and to implement what it considered to be a technical change regarding requirements for payment of royalty fees by electronic funds transfer (EFT) for each of the cable, satellite, and DART royalty licenses. In response to the publication of the proposed rule, the Office did not receive any substantive comments. Consequently, the Office is adopting the previously proposed text as a final rule.

II. Discussion

Close-out of DART fund accounts. In the NPRM, the Office proposed to codify a new procedure for closing out DART royalty payments accounts under section 1005 of the Copyright Act and to update its regulations governing online payment procedures for cable, satellite, and DART statements of account to no longer require royalty fees to be made by a single, lump sum payment.

As noted in the NPRM, the Audio Home Recording Act of 1992 (AHRA)¹ amended title 17 to require parties who manufacture and distribute or import and distribute any digital audio recording devices or media in the United States to file DART statements of account and to make royalty payments.² Congress delegated to the Copyright Office and the Copyright Royalty Tribunal (“CRT”)—a predecessor to the system administered by the Copyright Royalty Judges (“CRJs”)—authority to administer

¹ See Pub. L. 102-563, 106 Stat. 4237 (1992).

² See 17 U.S.C. 1003.

the royalty system under chapter 10.³ Under section 1003, the importer or manufacturer of a digital audio recording device or media files quarterly and annual statements of account with respect to distribution(s), accompanied by royalty payments.⁴ After deducting the reasonable costs incurred for administering this license, the Register then deposits the remaining balance with the Treasury of the United States, which is divided between a sound recording fund and a musical works fund, and then subdivided into various subfunds.⁵ Under the Copyright Act, the Licensing Division of the Copyright Office administers these funds and distributes them to copyright owners pursuant to the CRJs' distribution orders.⁶

After the Licensing Division has distributed the royalty funds pursuant to the CRJs order, however, small royalty balances can still be attributed to these subfunds unless the Copyright Office has formally closed them out.⁷ Maintaining these small amounts in separate funds creates administrative expenses for the Licensing Division, and the transaction costs associated with distributing such small amounts of money can exceed the amount of money remaining in these accounts. Section 1005 gives the Register discretion to close out the royalty payments account for a calendar year four years after the close of that year, and attribute "any funds remaining in [the] account and any subsequent deposits that would otherwise be attributable to that calendar year as

³ See *id.*; see also S. Rep. No. 102-294, at 39 ("Administration of the royalty system is the dual responsibility of the Copyright Office and the CRT").

⁴ 17 U.S.C. 1003(b), (c)(1), (c)(3).

⁵ *Id.* at 1005, 1006(b).

⁶ *Id.* at 1007; see, e.g., Order Granting Claimants' Request for Partial Distribution of 2005 Through 2008 DART Music Funds Royalties, Docket No. 2010-8 CRB DD 2005-2008 (MW), *available at* <https://www.crb.gov/orders/2011/04411-order-granting-claimants-partial-distribution.pdf> (last visited May 16, 2018).

⁷ These attributions can occur as a result of subsequent deposits made by payees, or, more often, in the course of routine review and adjustments made in the years following each appropriation, for example, when anticipated contract expenditures or other overhead expenses come in slightly under budget.

attributable to the succeeding calendar year.”⁸ In practice, the Register has not previously established a procedure to exercise this discretion. The Office now adopts a rule codifying conditions by which she may close out royalty payments accounts. Specifically, the Office is adding a new section 201.31 instructing that, four years after the close of any calendar year, the Register of Copyrights may exercise her discretion to close out the royalty payments account for that calendar year, including any sub-accounts, that are subject to a final distribution order under which royalty payments have been disbursed. In accordance with section 1005, the Register will treat any funds remaining in such account or subsequent deposits as attributable to the closest succeeding calendar year.

Payment by Electronic Funds Transfer. Separately, the Licensing Division administers various statutory licensing schemes, including those requiring the submission of statements of account (“SOAs”) by cable systems, satellite carriers, and manufacturers or importers of digital audio recording devices and media.⁹ Pursuant to its statutory authority, the Copyright Office has promulgated regulations relating to each of these statutory licenses requiring that “[a]ll royalty fees shall be paid by a single electronic funds transfer.”¹⁰ In practice, however, the Office has found that the requirement that remitters make royalty payments for multiple statements of account in a single, lump sum payment is unnecessarily restrictive and has hampered ongoing modernization efforts. In connection with the most recent satellite SOA form, the Copyright Office has announced

⁸ 17 U.S.C. 1005.

⁹ See 17 U.S.C. 111 (d)(1), 119 (b)(1), 122(a)(5), 1003(c).

¹⁰ 37 CFR 201.11(f)(1), 201.17(k)(1), 201.28(h)(1). See Electronic Payment of Royalties, 71 FR 45739 (Aug. 10, 2006).

that it “intends to transition to a single EFT payment method (Pay.gov) for making royalty payments.”¹¹

The new rule removes the requirement that filers submit multiple SOAs in a *single* EFT payment for the relevant statutory licenses. The current regulatory requirement that funds be submitted through EFT will remain in place.

List of Subjects in 37 CFR Part 201

Copyright, General provisions.

Final Regulations

For the reasons set forth in the preamble, the Copyright Office amends 37 CFR part 201 as follows:

PART 201—GENERAL PROVISIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 17 U.S.C. 702.

§ 201.11 [Amended]

2. Amend § 201.11 by removing “a single” from paragraph (f)(1) introductory text.

§ 201.17 [Amended]

3. Amend § 201.17 by removing “a single” from paragraph (k)(1) introductory text.

§ 201.28 [Amended]

4. Amend § 201.28 by removing “a single” from paragraph (h)(1) introductory text.

5. Add § 201.31 to read as follows:

§ 201.31 Procedures for closing out royalty payments accounts in accordance with the Audio Home Recording Act.

¹¹ U.S. Copyright Office, Satellite Statement of Account Form (Jan. 1, 2018), <https://www.copyright.gov/forms/formSC.pdf>.

(a) *General.* This section prescribes rules pertaining to the close out of royalty payments accounts in accordance with 17 U.S.C. 1005.

(b) In the Register's discretion, four years after the close of any calendar year, the Register of Copyrights may close out the royalty payments account for that calendar year, including any sub-accounts, that are subject to a final distribution order under which royalty payments have been disbursed. Following closure of an account, the Register will treat any funds remaining in that account, or subsequent deposits that would otherwise be attributable to that calendar year, as attributable to the succeeding calendar year.

Dated: September 10, 2018

Karyn Temple,
*Acting Register of Copyrights and
Director of the U.S. Copyright Office*

Approved by:

Carla D. Hayden,
Librarian of Congress

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